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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5815-N-02]

**Statutorily Mandated Designation of Difficult Development
Areas and Qualified Census Tracts: Revision of Effective Date for 2015 Designations**

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This document revises the effective date for designations of “Difficult Development Areas” (DDAs) and “Qualified Census Tracts” (QCTs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Internal Revenue Code (IRC) Section 42 (26 U.S.C. 42) published on October 3, 2014 (79 FR 59855). This Notice extends from 365 days to 730 days the period for which the 2015 lists of QCTs and DDAs are effective for projects located in areas not on the 2016 list of DDAs or QCTs, published November 24, 2015, at 80 FR 73201, but having submitted applications while the area was a 2015 QCT or DDA.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8234, Washington, DC 20410-6000; telephone number (202) 402-5878, or send an email to Michael.K.Hollar@hud.gov. For specific legal questions pertaining to Section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224; telephone number (202) 317-4137, fax number (202) 317-6731. For questions about the “HUB Zone” program, contact Mariana Pardo, Director, HUBZone Program, Office of Government Contracting and

Business Development, U.S. Small Business Administration, 409 Third Street, SW, Suite 8800, Washington, DC 20416; telephone number (202) 205-2985, fax number (202) 481-6443, or send an email to hubzone@sba.gov. A text telephone is available for persons with hearing or speech impairments at 800-877-8339. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at 800-245-2691 for a small fee to cover duplication and mailing costs.

COPIES AVAILABLE ELECTRONICALLY: This notice and additional information about DDAs and QCTs are available electronically on the Internet at

<http://www.huduser.org/datasets/qct.html>.

SUPPLEMENTARY INFORMATION:

This Document

This notice extends from 365 days to 730 days the period for which the 2015 lists of QCTs and DDAs are effective for projects located in areas not on the 2016 list of DDAs or QCTs, published November 24, 2015, at 80 FR 73201, but having submitted applications while the area was a 2015 QCT or DDA for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The actual designations of 2015 QCTs and DDAs are not affected by this notice. HUD is revising the effective date of the 2015 QCTs and DDAs at this time to aid the transition to Small Difficult Development Areas as announced in a notice designating 2016 QCTs and DDAs published at 80 FR 73201 and otherwise ensure that LIHTC and bond-financed projects relying on 2015 QCT or DDA designations and not in areas designated as 2016 QCTs and DDAs, but unable to meet the 365-day requirement of the original effective date of the 2015 QCT and DDA designations, may still be completed within 730 days.

The sections entitled “Effective Date” and “Interpretive Examples of Effective Date” of the 2015 DDA and QCT designations as published October 3, 2014 at 79 FR 59855 are hereby revised to read as follows:

Effective Date

The 2015 lists of QCTs and DDAs are effective:

- (1) for allocations of credit after December 31, 2014; or
- (2) for purposes of IRC Section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2014.

If an area is not on a subsequent list of DDAs, the 2015 lists are effective for the area if:

- (1) the allocation of credit to an applicant is made no later than the end of the 730-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

- (2) for purposes of IRC Section 42(h)(4), if:

- (a) the bonds are issued or the building is placed in service no later than the end of the 730-day period after the applicant submits a complete application to the bond-issuing agency, and

- (b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A “complete application” means that no more than de minimis clarification of the application is required for

the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a “multiphase project,” the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC Section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) the building(s) in the first phase were placed in service, or (b) the bonds were issued.

For purposes of this notice, a “multiphase project” is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (i.e., total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the Qualified Allocation Plan (QAP) of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the Census Bureau, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including Federal Register notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2015 DDA that is NOT a designated DDA in 2016 or 2017. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2015. Credits are allocated to Project A on October 30, 2017. Project A is eligible for the increase in basis accorded a project in a 2015 DDA because the application was filed BEFORE January 1, 2016 (the effective date for the 2016 DDA lists), and because tax credits were allocated no later than the end of the 730-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2015 DDA that is NOT a designated DDA in 2016, 2017, or 2018. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2015. Credits are allocated to Project B on March 30, 2018. Project B is NOT eligible for the increase in basis accorded a project in a 2015 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2016 (the effective date of the 2016 DDA lists), the tax credits were allocated later than the end of the 730-day period after the filing of the complete application.

(Case C) Project C is located in a 2015 DDA that was not a DDA in 2014. Project C was placed in service on November 15, 2014. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2015. The bonds that will support the permanent financing of Project C are issued on September 30, 2015. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2015 DDA, because the project was placed in service BEFORE January 1, 2015.

(Case D) Project D is located in an area that is a DDA in 2015, but is NOT a DDA in 2016, 2017, or 2018. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2015. Bonds are issued for Project D on April 30, 2017, but Project D is not placed in service until January 30, 2018. Project D is eligible for the increase in basis available to projects located in 2015 DDAs because: (1) one of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the IRC (the two events being bonds issued and buildings placed in service) took place on April 30, 2017, within the 730-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D

was in a DDA, and (3) both the issuance of the bonds and placement in service of Project D occurred after the application was submitted.

(Case E) Project E is a multiphase project located in a 2015 DDA that is NOT a designated DDA in 2016. The first phase of Project E received an allocation of credits in 2015, pursuant to an application filed March 15, 2015, which describes the multiphase composition of the project. An application for tax credits for the second phase Project E is filed with the allocating agency by the same entity on March 15, 2016. The second phase of Project E is located on a contiguous site. Credits are allocated to the second phase of Project E on October 30, 2016. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis accorded a project in a 2015 DDA, because it meets all of the conditions to be a part of a multiphase project.

(Case F) Project F is a multiphase project located in a 2015 DDA that is NOT a designated DDA in 2016. The first phase of Project F received an allocation of credits in 2015, pursuant to an application filed March 15, 2015, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2017. Credits are allocated to the second phase of Project F on October 30, 2017. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project F is, therefore, NOT eligible for the increase in basis accorded a project in a 2015 DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for

credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the year immediately following the first phase application year.

Findings and Certifications

Environmental Impact

This notice involves the establishment of fiscal requirements or procedures that are related to rate and cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements

of section 6 of the executive order. This notice merely designates DDAs as required under IRC Section 42 , as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical method used in making such designations. As a result, this notice is not subject to review under the order.

Dated: December 10, 2015

Katherine M. O'Regan, Ph.D.
Assistant Secretary for Policy
Development and Research

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